

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:)	Case No. 10-80982-TJM
)	
Robert Lee Pelshaw,)	MOTION FOR RELIEF FROM
)	AUTOMATIC STAY
)	
Debtor.)	
)	
)	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COMES NOW Mutual of Omaha Bank (hereinafter referred to as “Secured Creditor”), a creditor holding a secured claim in the above bankruptcy case, pursuant to the provisions of 11 U.S.C. §362 and Bankruptcy Rules 4001(1) and 9014, hereby moves the court to grant Secured Creditor relief in the captioned bankruptcy from the provision of 11 U.S.C. §362, for the following reasons:

1. Cause exists for lifting the automatic stay;
2. Secured Creditor is not adequately protected;
3. The Debtor have no realizable equity in the property which constitutes the collateral of Secured Creditor; and,
4. Secured Creditor has a secured interest in certain real estate of the Debtor;
5. The collateral of Secured Creditor is not necessary for an effective reorganization.

WHEREFORE, Secured Creditor respectfully prays:

- A. For an order vacating the automatic stay under 11 U.S.C. §362 or any other stay or injunction contained in any Order of this Court with respect to the collateral described herein, and for leave to reclaim said collateral;
- B. For authority to commence and to join in any other necessary parties’ defendant in any other reclamation action, replevin action, receivership proceeding, or foreclosure proceeding so that such actions or proceedings effectively may proceed;
- C. Secured Creditor, at its option, may offer, provide and enter into any potential forbearance agreement, loan modification, refinance agreement or other loan workout/loss mitigation agreement as allowed by state law. Secured Creditor may contact the Debtor via telephone or written correspondence to offer such an

agreement. Any such agreement shall be non-recourse unless included in a reaffirmation agreement.

D. For such other and further relief as is just and equitable.

In support of the above captioned motion, Secured Creditor states and represents as follows:

1. Secured Creditor holds a secured claim and is a party-in-interest in the above bankruptcy.
2. At all times from the filing of the bankruptcy petition herein to the present, Debtor has continued in possession of the property.
3. Secured Creditor is the holder of a secured claim originated on May 23, 2008 with a principal amount of \$256,000.00 and an interest rate of 5.5% per annum.
4. The claim of Secured Creditor is secured by the real property commonly known as **1236 Cork Drive, Papillion, NE 68046**. Lot 86, Tara Hills, as surveyed, platted and recorded in Sarpy County, Nebraska.
5. The Debtor failed to make the payments as required pursuant to the above-referenced Promissory Note and while Secured Creditor made demands for the payments Debtor has not provided the payments required therein.
6. The value of the collateral continues to diminish and Secured Creditor continues to be inadequately protected constituting cause for lifting of the automatic stay pursuant to Section 362(d)(1) of the Bankruptcy Code.
7. Cause exists for the lifting of the automatic stay in this case pursuant to Section 362(d)(2) of the Bankruptcy Code.
8. The Debtor has not provided Secured Creditor with any adequate protection, nor has the Debtor offered any form of adequate protection, including without limitation any periodic payments notwithstanding the continued use by Debtor of the property.
9. The continued use by the Debtor and the depreciation of the property which constitutes collateral of Secured Creditor, has caused Secured Creditor's security position to erode and deteriorate since the filing of the bankruptcy petition.
10. The collateral of Secured Creditor is not necessary for an effective reorganization.
11. Debtor has defaulted in payments under the Note and Deed of Trust as listed below.

The default figures stated below were accurate when provided, but should not be

relied upon for reinstatement as additional monthly payments, interest and other fees may be accruing or have accrued under the terms of the Deed of Trust. A current reinstatement or payoff statement may be obtained upon request.

AMOUNT OF MOVANT'S CLAIM:

Principal:		\$	234,749.83
Pre-Petition Arrears:			
Payments: 4/1/10 - 4/1/10	1 at \$2,091.73	\$	2,091.73
Bankruptcy Fees and Costs:		\$	300.00
Post-Petition Arrears:			
Payments: 5/1/10 - 11/1/10	7 at \$2,091.73	\$	14,642.11
Late Charges:		\$	209.18
BK Attorney Fees & Costs:		\$	800.00
Total Default:		\$	18,043.02
Total amount owed to Secured Creditor:		\$	252,792.85

EQUITY CALCULATION

2nd Deed of Trust held by Cornhusker Bank	\$	107,586.00
Property Taxes payable to Sarpy County Treasurer	\$	4,800.00
Total Debt Secured by Property:	\$	365,178.85
Value of Property Pursuant to Debtors Schedules A&D:	\$	320,000.00
Estimated Liquidation Costs (8% of Value):	\$	25,600.00
Net Equity in Property:	\$	(70,778.85)

[The rest of this page intentionally left blank.]

WHEREFORE, Mutual of Omaha Bank prays that the Court grant relief from the automatic stay provided in Subsection (a) of Title II, Section 362, of the Bankruptcy Code, that the Court waive the fourteen day stay provided for in Rule 4001(a)(3), attorney fees and costs incurred herein, and such other relief as may be appropriate to protect this Secured Creditor's rights herein. Alternatively, an Order requiring adequate protection of Secured Creditor's interest in the property.

DATED: November 24, 2010

Mutual of Omaha Bank,
Secured Creditor

By: /s/ Kristin A. Zilberstein

Kristin A. Zilberstein, Esq., 200041
McCarthy & Holthus, LLP
1770 4th Avenue
San Diego, CA 92101
Tel: (619) 685-4800

ATTORNEY FOR SECURED CREDITOR

CERTIFICATE OF SERVICE

On 11/24/2010, I served the foregoing **MOTION FOR RELIEF FROM STAY and NOTICE OF HEARING** on the following individuals by electronic means through the Court's ECF program:

COUNSEL FOR DEBTOR
Howard T. Duncan
cathy@hduncanlaw.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Andrada Cretu
Andrada Cretu

On 11/23/2010, I served the foregoing **MOTION FOR RELIEF FROM STAY and NOTICE OF HEARING** on the following individuals by depositing true copies thereof in the United States mail, enclosed in a sealed envelope, with postage paid, addressed as follows:

DEBTOR
Robert Lee Pelshaw
PO Box 461059
Papillion, NE 68046

SPECIAL NOTICE
First Westroads Bank c/o Mark James LaPuzza
Pansing Hogan Ernst Bachman
10250 Regency Circle Suite 300
Omaha, NE 68114

Mutual of Omaha Bank c/o Andrew J. Whealy
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102

Nebraska Department of Labor, Catherine D. Lang, Commissioner of Labor c/o Thomas
A. Ukinski
Nebraska Department of Labor
P O Box 94600
Lincoln, NE 68509-4600

Pelstar Development, LLC c/o Brian J. Koenig
Koley Jessen, P.C., L.L.O
1125 S. 103rd St., Suite 800
Omaha, NE 68124

Pelstar Development, LLC c/o Donald L. Swanson
Koley Jessen P.C.
1125 So 103rd St, Ste 800
Omaha, NE 68124

Centennial Bank c/o Steven J. Woolley
McGill, Gotsdiner, Workman & Lepp, P.C.
11404 W. Dodge Road, Ste. 500
Omaha, NE 68154

Mutual Of Omaha Bank
3333 Farnam St.
Omaha,, NE 68131

Cornhusker Bank
PO Box 80009
Lincoln,, NE 68501-0009

Lyons State Bank
101 E Main St.
Lyons,, KS 67554-2002

Southern Bank
302 Washington St.
Doniphan,, MO 63935

Uinta County Bank
695 Parkway Dr.
Mountain View, WY 82939

Omaha Neon Co.c/o C2C Systems
56 perimeter Center East #100
Atlanta,, GA 30346

First Westroads Bank
PO Box 241259
Omaha,, NE 68124

Sam Murante
2411 O St. #1
Omaha,, NE 68107

Centennial Bank
9003 S 145th St.
Omaha,, NE 68138

US Bank
222 S 72nd St.
Omaha,, NE 68114

Steve Willey
5935 S 132nd St.
Omaha,, NE 68137-3122

Banker's Trust
10250 Regency Circle #115
Omaha,, NE 68114

Charter West National Bank
c/o Jeffrey A. Silver
10805 Old Mill Road
Omaha, NE 68154

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Hue Banh
Hue Banh